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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of ANDRE DELOJE
and ANDREEA DUMITRESCU.

B241245

(Los Angeles County
Super. Ct. No. BD494069)

ANDRE DELOJE,

Respondent,

v.

DAVID J. PASTERNAK, as Receiver, etc.,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Christine Byrd, Judge. Affirmed in part, reversed in part and remanded with directions.

Pasternak, Pasternak & Patton, John W. Patton, Jr. for Appellant.

Allione & Associates, Paul R. Allione for Respondent.

David J. Pasternak, a court-appointed receiver in this marital dissolution action, appeals from the court's order denying him the full amount of receivership fees he requested. We reverse the order to the extent it denies Pasternak any fees for successfully defending a prior appeal in this action and for finalizing a court-ordered sale of property. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Marital Dissolution Action

Andre Deloje and Andreea Dumitrescu were married on September 16, 2004. On October 10, 2008 Deloje petitioned for dissolution of the marriage. Dumitrescu requested temporary spousal support, attorney fees and additional funds to conduct a forensic accounting of the community's interest in several real properties held in Deloje's name. In response Deloje maintained he made his living buying and selling real property through his company, ADAD, LLC, which he had acquired before the marriage. He also asserted ADAD lost money during the four years he and Dumitrescu were married and his personal assets and bank accounts had been depleted. He claimed the only significant asset he owned was a Roth individual retirement account (Roth IRA)¹ in which, among other things, he held real estate valued at \$1,258,895.36. Deloje insisted he had made no contributions to his Roth IRA during the marriage.

After a full hearing, on December 2, 2008 the court found Deloje's description of his financial condition not credible and ordered him to pay Dumitrescu \$2,428 per month in temporary spousal support, \$10,000 in attorney fees incurred by Dumitrescu and an additional \$5,000 for a forensic accountant.

2. The Appointment of a Receiver

On March 25, 2009, after Deloje failed to pay anything in connection with the court's December 2, 2008 order, the court appointed Pasternak as a receiver and directed him to review Deloje's real estate portfolio and provide the court with a proposal as to

¹ A Roth IRA is a particular individual retirement plan defined in title 26 of the United States Code sections 7701(a)(37) and 408a.

whether any of Deloje's real properties should be "refinanced, sold or otherwise liquidated" to satisfy the December 2, 2008 order.

3. The Court's Order Placing Seven of 99 Real Properties in Receivership

On May 18, 2009 Pasternak reported his findings and recommendations to the court. The court ordered Deloje's outstanding obligations, including spousal support and attorney and forensic accounting fees, as well as Pasternak's receivership fees, to be paid from the sale of Deloje's real property. On June 23, 2009 the court clarified that seven of the 99 real properties held in Deloje's Roth IRA were to be placed in receivership and listed for sale "as is," "subject to this [c]ourt's confirmation with possible overbidding."

4. Pasternak's Request To Confirm the Sale of Two Real Properties

On November 16, 2009 Pasternak filed and served an ex parte application seeking, among other things, orders confirming the sale of two undeveloped properties, 8571 and 8573 Crescent Drive, for the sum of \$60,000. Deloje urged the application be denied, asserting the properties were part of his Roth IRA and thus exempt from execution under Code of Civil Procedure section 704.115. The court denied the ex parte request but continued the matter for a full hearing.

On December 1, 2009 the trial court granted Pasternak's request and confirmed the sale of the Crescent Drive properties. The court directed that the "[f]irst \$20,000 of sale proceeds shall pay Receiver's bond premium, [the] next \$30,000 [to go] to [Dumitrescu] for [spousal] support and [the] balance" to go toward the payment of Pasternak's administrative fees.

5. Deloje's Appeal from the Order Confirming the Sale and His and Dumitrescu's Settlement of Their Marital Dissolution Action

On December 11, 2009 Deloje filed a notice of appeal challenging the court's order confirming Pasternak's proposed sale of the properties. On March 10, 2010 the trial court granted Pasternak's request to place 24 real properties in the receivership and authorized him to list the additional properties for sale. Soon thereafter, Deloje and Dumitrescu resolved their family law dispute; and Deloje dismissed his appeal as to Dumitrescu only. Judgment in the dissolution action was entered on September 23, 2010.

Deloje, however, continued to prosecute the appeal against Pasternak challenging the sale of the Crescent Drive properties, and Pasternak defended it to preserve his right to use the proceeds of the sale to satisfy his outstanding receivership fees.

On November 10, 2010 Deloje moved in the trial court to stay all proceedings relating to the liquidation of his real properties pending resolution of the appeal, to reduce the amount of the receiver's bond retroactively and to terminate the receivership and determine the amount of receiver's fees and costs. After several continuances, on April 19, 2011 the court denied Deloje's request to terminate the receivership. As for the stay request, the court ruled all proceedings to liquidate the property would be stayed only if Deloje posted a bond in the amount of \$125,000 pursuant to Code of Civil Procedure section 917.4. Although Deloje did not post a bond, Pasternak could not complete the sale while the property's status remained uncertain.² Pasternak continued to provide monthly receivership reports to Deloje throughout this period. (See Cal. Rules of Court, rule 3.1182.)

On September 19, 2011 we affirmed the trial court's December 1, 2009 order, holding the Crescent Drive properties were not exempt from execution and could be sold to satisfy Pasternak's fees and expenses. (See *In re Marriage of Deloje and Dumitrescu* (Sept. 19, 2011, B220897) [nonpub. opn.])

6. *Deloje's Motion To Terminate The Receivership and Pasternak's Final Accounting*

Following our decision, Deloje moved to terminate the receivership and set a hearing as to a final accounting of Pasternak's fees and costs. Deloje withdrew the motion at the October 19, 2011 hearing, acknowledging the sale of the Crescent Drive properties was still in progress and it would be improper to terminate the receivership while the sale was pending. The court (a different judge from the one who had appointed Pasternak) continued the matter at Deloje's request, but conveyed its displeasure with continuing the receivership. The court observed that Pasternak's fees and expenses as of

² Pasternak explained the buyer had refused to close the sale until Pasternak's authority to sell the property was resolved on appeal.

March 2010, at the time Deloje and his wife settled their marital dispute, were approximately \$50,000; and by October 2011 had nearly doubled with no further benefit to the estate: “I find this whole situation just absolutely horrendous. What has gone on here, the fees incurred[,] in other words, the selling property to cover fees, that it’s all negative. It’s all just going further into the hole. I don’t see the benefit to the estate anywhere here, but nevertheless the orders are what they are. . . . We need to have an end game here. Otherwise . . . [i]t will be a never ending cycle.”

In response to the court’s concerns about an unnecessarily prolonged receivership, Pasternak explained he could have completed his work as receiver by selling the Crescent Drive properties in the Spring of 2010 had Deloje agreed to abandon his appeal challenging that sale. At that time, Pasternak asserted, the sale would have likely covered the full amount of receivership fees and expenses and the receivership could have been terminated. Because Deloje had continued to prosecute the appeal even after he settled his marital dispute, however, the Crescent Drive properties could not be sold; the receivership remained active pursuant to court order; and Pasternak was forced to defend the appeal as well as spend additional time satisfying the receiver’s mandatory reporting requirements.

The court advised the parties it intended to terminate the receivership at the earliest opportunity and ordered Pasternak to provide a final accounting. In the meantime, Pasternak was ordered to complete the sale of the Crescent Drive properties.

On November 28, 2011 Pasternak moved ex parte for an order confirming the sale of other real property in the receivership for the purpose of satisfying Pasternak’s fees. Deloje objected. Deloje ultimately agreed to place \$50,000 in an escrow account until the amount of Pasternak’s fees was resolved by the court. Based on that agreement, Pasternak withdrew his request to sell additional property.

Deloje’s motion to terminate the receivership and Pasternak’s final accounting of receivership fees and expenses were finally heard together on February 22, 2012. Pasternak sought \$117,587.48 in fees and expenses related to the receivership: \$88,335.83 for the period March 25, 2009 (the inception of the receivership) through

August 21, 2011, and \$29,251.65 for the period September 1, 2011 through “the anticipated termination of the receivership,” including \$7,500 for “estimated future fees and costs” in connection with attending the hearing and closing out the estate. Pasternak attached to his final accounting his line-item billing reports, which included a description of the work provided and the hours and costs incurred, and his declaration attesting to his hourly rate. (See Cal. Rules of Court, rule 3.1184.)

Deloje contended Pasternak had committed various acts of negligence during the receivership. Deloje also argued each mandated receivership report following the September 2010 judgment in the marital dissolution action was essentially the same but for an additional sentence or paragraph and claimed Pasternak had vastly overbilled for his time in preparing them. As for the fees incurred in defending the appeal, Deloje did not challenge the reasonableness of the fees, but argued that no fees should have been incurred at all. Rather, Pasternak should have “abandoned” the appeal and sold the Crescent Drive properties following the March 2010 settlement between Deloje and Dumitrescu. Deloje maintained that, contrary to Pasternak’s contention, Pasternak could have completed the sale since no stay order was in effect. Overall, Deloje argued, Pasternak had spent at most 118 hours in connection with the receivership. At Pasternak’s “average” billing rate of \$500 per hour, Pasternak was entitled to no more than \$59,000.

After permitting additional briefing, on March 14, 2012 the trial court issued its order awarding Pasternak a total of \$64,287.60 in receivership fees: The award included the \$55,862.60 Pasternak had requested for fees and expenses incurred prior to the judgment in the marital dissolution action (an amount the court implicitly found was reasonable and in good faith) and \$8,425 in additional postjudgment fees.³ The court denied Pasternak’s request for costs and fees relating to his defense of the prior appeal in this action, agreeing with Deloje that Pasternak could have sold the Crescent Drive

³ The court itemized the post-September 23, 2010 fees as follows: \$6,075 for preparation of the final report and accounting, \$1,100 for attendance at the hearing and \$1,250 for closing out the receivership.

properties and abandoned the appeal once the parties had settled their marital dissolution dispute, thereby substantially reducing the costs of the receivership and limiting further harm to the estate.

DISCUSSION

1. Standard of Review

A trial court has broad discretion in fixing the amount of fees awarded to a receiver. (*Melikian v. Aquila* (1998) 63 Cal.App.4th 1364, 1368; *People v. Riverside University* (1973) 35 Cal.App.3d 572, 587.) Such an order will not be disturbed on appeal unless a manifest abuse of discretion is shown. (*PLMC Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The question whether a party is legally entitled to fees at all is subject to de novo review. (See generally *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175-1176; *Carpenter & Zuckerman, LLP v. Cohen* (2011) 195 Cal.App.4th 373, 378 [order granting or denying attorney fees is generally reviewed for an abuse of discretion; however, the determination whether such fees are legally authorized is a question of law subject to de novo review].)

2. Governing Law

A receiver is an agent of the court, appointed to aid it in preserving and managing the property involved in the suit for the benefit of those to whom it may ultimately be determined to belong. (*Lesser & Son v. Seymour* (1950) 35 Cal.2d 494, 499; *Gold v. Gold* (2003) 114 Cal.App.4th 791, 806; see Cal. Rules of Court, rule 3.1179.) The receiver is entitled to reasonable compensation for the services it performs. (See *Stanton v. Pratt* (1941) 18 Cal.2d 599, 603 [receiver entitled to reasonable fees and expenses incurred as compensation for fulfilling receivership duties]; Cal. Rules of Court, rule 3.1184(d) [authorizing compensation for duties performed by receiver].)

3. The Trial Court Erred in Denying Pasternak His Fees Incurred in Defending the Prior Appeal

In his final accounting Pasternak reported he had incurred \$18,000 in costs and fees in defending the prior appeal in this matter. The trial court denied Pasternak any fees in connection with the prior appeal, agreeing with Deloje that Pasternak should have

“abandoned” the appeal following the entry of judgment in the marital dissolution action. The court’s reasoning is flawed. Deloje was the appellant in this collateral receivership action, not Pasternak. To the extent the appeal could have been abandoned, it was Deloje who was in the position to do so and thereby permit the sale of the Crescent Drive properties to pay Pasternak’s receivership fee in accordance with the trial court’s order. He did not. By continuing to prosecute the appeal, Deloje prolonged the receivership, forcing Pasternak to incur costs to defend the appeal and complete the sale in accordance with the court’s order.

Deloje asserts Pasternak acted in bad faith throughout the receivership, particularly in relation to expenses incurred in listing other property for sale in Palm Springs, but does not suggest the court applied any offsets in denying Pasternak fees for defending the appeal; and no such finding can be inferred from this record. On remand, the trial court will have the opportunity to consider in the first instance the reasonableness of the \$18,000 Pasternak requested for defending the appeal along with any offsets, to the extent any are applicable.

4. The Trial Court Erred in Failing To Compensate Pasternak for His Efforts in Finalizing the Sale of the Crescent Drive Properties

Pasternak also contends the court erred by failing to compensate him for the time spent effecting the sale of the Crescent Drive properties after September 25, 2010. It is not clear whether the trial court refused to compensate Pasternak for those efforts based on its conclusion that such efforts were primarily expended (and compensated) prior to September 25, 2010 when Pasternak found the buyer and arranged the sale (a matter fairly within the court’s discretion and for which it had already compensated Pasternak), or on its erroneous finding Pasternak was at fault for defending the appeal and delaying the sale. Pasternak sought additional funds for his efforts in October 2011 to finalize the sale once his authority to do so was resolved by this court. The trial court may find the total fees requested in that regard are unreasonable or offset by other items; but on this record the court’s decision to deny Pasternak any fees for his actions in finalizing a court-ordered sale of property is unjustified.

5. The Trial Court Did Not Err in Denying Pasternak's Request for Additional Fees Associated with the Preparation of Several Interim Reports

Pasternak also contends the court abused its discretion in denying his request for \$3,375 for the preparation of nine interim receivership reports, which he was required to prepare. (See Cal. Rules of Court, rule 3.1182.) The trial court carefully considered Pasternak's request for fees in connection with reports generated after September 25, 2010, aware those reports were legally required. Ultimately, the court found his request unreasonable because the post-September 25, 2010 interim reports were effectively identical to one another and to prior reports for which he had been compensated (with some minor modifications to reflect the different time period). The court found any costs relating to these additional reports were negligible. Pasternak does not directly dispute that assessment, and our review of the reports in the record supports the trial court's characterization. The court's refusal to award additional fees for those reports was not an abuse of its broad discretion.

DISPOSITION

The March 14, 2012 order is reversed to the extent it denies Pasternak any fees in connection with defending the prior appeal in this action and finalizing the sale of the Crescent Drive properties. On remand the trial court is directed to determine the reasonable fees and costs incurred in connection with those activities and whether any offsets should be applied. In all other respects the order is affirmed. Each party is to bear his own costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.